IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| ALI ABBAS; JESSICA CURTIS; AND ALL OTHERS SIMILARLY SITUATED<br>PLAINTIFFS,<br><br>v.<br><br>NILKANTH NARAYAN, LLC; GHANSHAYAM ENTERPRISE, LLC; SHREEJI MARAJH ENTERPRISE, LLC; HIREN JASHVANTBHAI PATEL; AND, SMITA HIREN PATEL<br>DEFENDANTS. | **Civil Action**<br>**File No. 4:16-cv-00258**<br><br>**Jury Demanded** |

## PLAINTIFFS' ORIGINAL COMPLAINT

NOW COME PLAINTIFFS, Ali Abbas, Jessica Curtis, and all others similarly situated, and complain of Defendants Nilkanth Narayan, LLC; Ghanshayam Enterprise, LLC; Shreeji Marajh Enterprise, LLC; Hiren Jashvantbhai Patel; and Smita Hiren Patel (collectively, "Defendants"), and for cause of action would respectfully show the Honorable Court as follows:

**I.**

## INTRODUCTION

1. This is a collective action suit to recover unpaid overtime wages brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"); as such, the action is authorized and instituted pursuant to a federal statute.

2. This action seeks equitable relief, compensatory and liquidated damages, attorney's fees, all costs of the action, and post-judgment interest for Defendants' willful failure to pay overtime wages to Ali Abbas and Jessica Curtis (collectively, "Plaintiffs"), and to all others similarly situated, in the course of their employment with the Defendants.

## II.

## JURISDICTION AND VENUE

3. Plaintiffs, on behalf of themselves and the plaintiff class, bring this action to recover unpaid overtime compensation from Defendants pursuant to the FLSA.

4. The Court has jurisdiction of the claims asserted herein pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1367.

5. The Court has personal jurisdiction over the Defendants because Defendants routinely conduct business in Texas, and in particular, in the Southern District of Texas, sufficient to constitute minimum contacts with the state and this district.

6. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1441(a).

## III.

## PARTIES

7. **Ali Abbas**, Plaintiff, is a resident of Harris County, Texas.

8. **Jessica Curtis**, Plaintiff, is a resident of Harris County, Texas.

9. **Members of the "Plaintiff Class"** are current and former hourly and non-exempt salaried employees of Defendants who work, or have worked, at one or more of Defendants' establishments that collectively comprise an enterprise under the FLSA.

10. Defendant, **Nilkanth Narayan, LLC,** is a validly existing Texas limited liability company that may be served with summons and complaint by serving its duly appointed registered agent, Ms. Smita Hiren Patel, at her place of business located at 15303 Ella Boulevard, Houston, Texas 77090, or at any other address where she may be found. This Defendant is part of an "enterprise" that owns, or has owned, one or more business establishments engaged in interstate commerce or in the production of goods for interstate commerce, including the

business establishment known as, and doing business as, "Bammel Food Mart", located at 10131 Old Bammel N. Houston Road, Houston, Texas 77086.

11. Defendant, **Ghanshayam Enterprise, LLC,** is a validly existing Texas limited liability company that may be served with summons and complaint by serving its duly appointed member, Mr. Hiren Jashvantbhai Patel, at his residence located at 4427 Rolling Field Lane, Sugarland, Texas 77479, or at any other address where he may be found. This Defendant is part of an "enterprise" that owns one or more business establishments engaged in interstate commerce or in the production of goods for interstate commerce, including a Texaco branded gasoline station and convenience store located at 15303 Ella Boulevard, Houston, Texas 77090.

12. Defendant, **Shreeji Marajh Enterprise, LLC,** is a validly existing Texas limited liability company that may be served with summons and complaint by serving its duly appointed managing member, Ms. Smita Hiren Patel, at her place of business located at 15303 Ella Boulevard, Houston, Texas 77090, or at any other address where she may be found. This Defendant is part of an "enterprise" that owns one or more business establishments engaged in interstate commerce or in the production of goods for interstate commerce, including a Texaco branded gasoline station and convenience store doing business as "Sunmart #132", located at 1110 North Sam Houston Parkway West, Houston, Texas 77038.

13. Defendant, **Hiren Jashvantbhai Patel,** is an individual who may be served with summons and complaint at his residence located at 4427 Rolling Field Lane, Sugarland, Texas 77479, or at any other address where he may be found. This Defendant is part of an "enterprise" that owns, or has owned, one or more business establishments engaged in interstate commerce or in the production of goods for interstate commerce, including the business establishments owned and operated by Defendants Nilkanth Narayan, LLC, Ghanshayam Enterprise, LLC, and Shreeji

Marajh Enterprise, LLC.

14. Defendant, **Smita Hiren Patel,** is an individual who may be served with summons and complaint at her place of business located at 15303 Ella Boulevard, Houston, Texas 77090, or at any other address where she may be found. This Defendant is part of an "enterprise" that owns, or has owned, one or more business establishments engaged in interstate commerce or in the production of goods for interstate commerce, including the business establishments owned and operated by Defendants Nilkanth Narayan, LLC, Ghanshayam Enterprise, LLC, and Shreeji Marajh Enterprise, LLC.

15. Whenever in this complaint it is alleged that the above named Defendants committed any act or omission, it is meant that Defendants' officers, directors, vice-principals, agents, servants, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendants or was done in the routine normal course and scope of employment of Defendants' officers, directors, vice-principals, agents, servants, or employees.

16. At all material times, Defendants have been an "employer" within the meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d).

17. At all material times, Plaintiffs and all members of the Plaintiff Class have been "employees" within the meaning of 29 U.S.C. § 203(e).

18. At all material times, Defendants have been an "enterprise" within the meaning of 29 U.S.C. § 203(r).

19. At all material times, each Plaintiff was an employee engaged in interstate commerce or in the production of goods for interstate commerce. 29 U.S.C. §§ 206-207.

20. At all material times, Defendants have been an enterprise engaged in interstate

commerce or in the production of goods for interstate commerce within the meaning of Section 3(s)(1) of the FLSA because each Defendant had employees who were engaged in interstate commerce. 29 U.S.C. § 203(s)(1).

## IV.

## COLLECTIVE ACTION ALLEGATIONS

21. Plaintiffs file this case as an "opt-in" collective action, as is specifically allowed by 29 U.S.C. § 216(b).

22. Other employees have been victimized by Defendants' ill-conceived patterns, practices, and policies that violate the FLSA. As such, other similarly situated employees are being denied their lawful wages, and Plaintiffs' experiences are typical of the experiences of members of the Plaintiff Class as it pertains to unpaid wages.

23. The specific job titles or job requirements of the various members of the Plaintiff Class do not prevent collective treatment.

24. Furthermore, although the amount of damages may vary among individual members of the Plaintiff Class, there is no detraction from the common nucleus of liability facts that render this matter appropriate as a collective action under 29 U.S.C. § 216(b).

25. All current and former non-exempt employees, regardless of job title, job requirements, or rate of pay, to whom the Defendants have denied overtime compensation for hours worked in excess of 40 in one or more workweek, are similarly situated to the Plaintiffs, and are thus appropriate members of the Plaintiff Class.

26. All current and former non-exempt employees employed by Defendants' business establishments, who at any time during the three years prior to the date of filing of this action to the date of judgment were denied overtime compensation in any given workweek may properly

be included as members of the Plaintiff Class.

27. The class Plaintiffs thus seek to represent is comprised of all current and former employees the Defendants' "enterprise" employed as hourly or non-exempt salaried workers 1) who worked at any business establishment of Defendants' "enterprise" located in Texas that was owned, operated and / or acquired during the class period, and 2) who the Defendants' "enterprise" either (a) misclassified as exempt from overtime wages, or (b) failed to compensate at the proper hourly overtime rate.

28. Individuals who opt into the collective action will be added to the litigation, and copies of their written consents to join a collective action will be filed with the Honorable Court.

**V.**

**FACTS**

29. At all times relevant to this action, Defendants' "enterprise" has been subject to the requirements of the FLSA.

30. For purposes of this action, the "relevant period" is the time-period commencing on the date that is three years prior to the filing of this action, and continuing thereafter until time of trial.

31. Defendants' "enterprise" employed Mr. Abbas as a store clerk at their business establishment doing business as "Bammel Food Mart" at 10131 Old Bammel N. Houston Road, Houston, Texas 77086.

32. Defendants' "enterprise" employed Mr. Abbas from November 10, 2014, until September 30, 2015.

33. During his employment with the Defendants, Mr. Abbas was promised a fixed wage of $750.00 per week.

34. Mr. Abbas did not receive any overtime wages in addition to his fixed weekly wage of $750.00.

35. When Mr. Abbas complained of his unpaid overtime wages, his employment was terminated in retaliation, and in violation of the FLSA.

36. As Defendants' employee, Mr. Abbas was required to perform duties typically performed by "hourly" or non-exempt employees.

37. Mr. Abbas was required to work 84 hours a week during each workweek of his employment, except in November 2014 (65 hours per week) and December 2014 (70 hours per week).

38. Defendants' "enterprise" employed Ms. Curtis as a store clerk at their business establishment doing business as "Bammel Food Mart" at 10131 Old Bammel N. Houston Road, Houston, Texas 77086.

39. Defendants' "enterprise" employed Ms. Curtis from December 3, 2014, until September 30, 2015.

40. During her employment with the Defendants, Ms. Curtis was promised a fixed wage of $650.00 per week.

41. Ms. Curtis did not receive any overtime wages in addition to her fixed weekly wage of $650.00.

42. When Ms. Curtis complained of her unpaid overtime wages, her employment was terminated in retaliation, and in violation of the FLSA.

43. As Defendants' employee, Ms. Curtis was required to perform duties typically performed by "hourly" or non-exempt employees.

44. Ms. Curtis was required to work 63 hours a week during each workweek of her

employment, except in February, March and April 2014, when she was required to work 84 hours a week.

45. Similarly, during at least all or part of the last three years, all non-exempt workers employed by all business establishments owned and/or operated by the Defendants were routinely required to work in excess of 40 hours per week to perform the function of their job which included the performance of duties otherwise typically performed by "hourly" paid non-exempt employees because the job required it and Defendants' management required it.

46. Defendants required Plaintiffs and all others similarly situated to perform all necessary work to include the performance of those duties otherwise typically performed by "hourly" employees, which duties routinely required Plaintiffs and other similarly situated employees to work "overtime" hours as defined by 29 U.S.C. § 201 *et seq*.

47. Plaintiffs and all other similarly situated employees were not paid at the proper premium hourly rates for the overtime hours they worked each week.

48. As such, the Plaintiffs and all other similarly situated non-exempt employees of the Defendants were together victims of a common policy of Defendants' "enterprise", which common policy violated the FLSA.

49. As victims of a common policy that violated the FLSA, Plaintiffs and all other similarly situated non-exempt employees of the Defendants may properly be joined as a class under 29 U.S.C. § 216(b).

50. Plaintiffs and all other similarly situated employees thus sue the Defendants' "enterprise", as a class, for their unpaid overtime wages owed under the FLSA.

## VI.

## CAUSES OF ACTION

### A.
### First Claim For Relief
(Failure to pay wages in violation of the FLSA)

51. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

52. Plaintiffs and all others similarly situated are non-exempt employees – that is, these individuals are entitled to receive overtime wages under the FLSA for all hours they have worked in excess of 40 during each seven-day workweek.

53. During his employment, Mr. Abbas routinely worked 40 hours or more per week.

54. During her employment, Ms. Curtis routinely worked 40 hours or more per week.

55. Defendants did not pay either Plaintiff overtime compensation for the weekly hours worked in excess of 40.

56. Defendants also failed, and continue to fail, in paying the overtime wages owed to all other similarly situated employees since the beginning of the three-year period preceding the filing of this civil action.

57. As such, Defendants violated 29 U.S.C. § 201, *et seq*., by failing to pay each Plaintiff and all other similarly situated employees' "overtime" wages.

58. Defendants knowingly and willfully carried out their illegal pattern and practice of not paying their employees' overtime wages, and thereby evaded their legal obligations under 29 U.S.C. § 201, *et seq*.

59. Plaintiffs and all others similarly situated seek an amount of back-pay equaling the unpaid overtime wages earned from the date they commenced employment for the

Defendants until the date of trial (or their last day of employment, if earlier).

60. Plaintiffs and all others similarly situated further seek an additional equal amount as liquidated damages, as well as reasonable attorney's fees and costs as allowed under 29 U.S.C. § 216(b), along with post-judgment interest at the highest rate allowed by law.

61. Defendants do not possess contemporaneous, complete and accurate records of the number of hours worked by each Plaintiff and by other similarly situated employees.

62. If Defendants possess such time records, Plaintiffs and members of the Plaintiff Class will suffer irreparable harm if Defendants are not enjoined from this moment and during the pendency of this lawsuit from destroying any records that are in any way related to the matters asserted herein, including any correspondence between Defendant, Plaintiff, and / or members of the Plaintiff Class, and any records required to be maintained by the FLSA and the Texas Payday Act.

63. There is substantial likelihood that Plaintiffs and members of the Plaintiff Class will prevail at the trial of this matter.

64. The harm that will result is irreparable because Plaintiffs and members of the Plaintiff Class will not be able to replicate the destroyed evidence.

65. Plaintiffs will not have any adequate remedy at law if Defendants destroy records pertaining to their employment, and thus they seek the Court to place Defendants on notice regarding the spoliation of all such evidence.

**B.**

**Second Claim For Relief**

(Retaliation in violation of the FLSA)

66. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

67. Defendants terminated each Plaintiff's employment after he or she engaged in protected activity. After the Plaintiffs complained of not receiving overtime wages, Mr. Abbas' and Ms. Curtis' employment was terminated.

68. As such, Defendants' "enterprise" violated 29 U.S.C. § 215(a)(3), the anti-retaliation provision of the FLSA, under which each Plaintiff now sues.

## VII.

## ATTORNEYS' FEES AND COSTS

69. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

70. Plaintiffs, and all others similarly situated, seek to recover their attorneys' fees and costs for bringing this action pursuant to 29 U.S.C. § 201, *et seq*.

## VIII.

## JURY DEMAND

71. Plaintiffs, and all others similarly situated, demand a jury trial on all issues that may be tried to a jury.

## IX.

## PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Ali Abbas, Jessica Curtis, and all others similarly situated, respectfully request that upon final hearing, the Court grant the Plaintiffs, and all others similarly situated, relief against Defendants Nilkanth Narayan, LLC; Ghanshayam Enterprise, LLC; Shreeji Marajh Enterprise, LLC; Hiren Jashvantbhai Patel; and Smita Hiren Patel, as follows:

a. Authorize the issuance of notice to all of Defendants' enterprise's similarly situated employees who were employed during the three (3) years immediately preceding the filing of this lawsuit, informing them of their right to participate in this lawsuit;

b. Declare that Defendants' enterprise violated 29 U.S.C. § 207, by failing to pay Plaintiffs, and all others similarly situated, overtime pay at one and one half times their regular hourly base rate for all hours in excess of 40 worked during each seven-day work period;

c. Enjoin Defendants' enterprise from failing to pay Plaintiffs, and all others similarly situated, at one and one half times their regular hourly rates for all hours in excess of 40 worked in each seven-day work period;

d. Declare that Defendants' enterprise's violations of the FLSA are willful;

e. Order Defendants' enterprise to pay liquidated damages to Plaintiffs, and to all others similarly situated, in an amount equal to the unpaid overtime wages;

f. Enter an injunction restraining Defendants' enterprise from destroying any payroll or other relevant records;

g. Order Defendants' enterprise to pay Plaintiffs' and all other similarly situated employees' reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b);

h. Order Defendants' enterprise to pay post-judgment interest at the highest lawful rate for all amounts, including attorney fees, assessed against Defendants' enterprise; and,

i. Order all further relief, whether legal, equitable or injunctive, as may be necessitated to effectuate full relief to each Plaintiff, and to all other similarly situated employees of Defendants' enterprise.

Respectfully submitted,

**ALI S. AHMED, P.C.**

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